

111TH CONGRESS
2D SESSION

S. 3659

To reauthorize certain port security programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2010

Ms. COLLINS (for herself and Mrs. MURRAY) introduced the following bill;
which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To reauthorize certain port security programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “SAFE Port Reauthorization Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Port security grants.
- Sec. 3. Extension of port security programs.
- Sec. 4. Customs-Trade Partnership Against Terrorism.
- Sec. 5. Recognition of other countries’ trusted shipper programs.
- Sec. 6. Secure Freight Initiative.
- Sec. 7. America’s Waterway Watch Program.

Sec. 8. Research, development, test, and evaluation efforts in furtherance of
maritime and cargo security.

Sec. 9. Coast Guard Port Assistance Program.

1 SEC. 2. PORT SECURITY GRANTS.

2 Section 70107(l) of title 46, United States Code, is
3 amended to read as follows:

4 “(l) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated \$400,000,000 for each
6 of the fiscal years 2010 through 2015 to carry out this
7 section.”.

8 SEC. 3. EXTENSION OF PORT SECURITY PROGRAMS.

9 (a) AUTOMATED TARGETING SYSTEM.—Section
10 203(g) of the SAFE Port Act (6 U.S.C. 943(g)) is amend-
11 ed by striking paragraphs (1) through (3) and inserting
12 the following:

13 “(1) \$32,560,000 for fiscal year 2010;

14 “(2) \$32,565,000 for fiscal year 2011;

15 “(3) \$33,475,000 for fiscal year 2012;

16 “(4) \$34,500,000 for fiscal year 2013;

17 “(5) \$35,550,000 for fiscal year 2014; and

18 “(6) \$36,580,000 for fiscal year 2015.”.

19 (b) CONTAINER SECURITY INITIATIVE.—Section
20 205(m) of the SAFE Port Act (6 U.S.C. 945(m)) is
21 amended by striking paragraphs (1) through (3) and in-
22 serting the following:

23 “(1) \$162,000,000 for fiscal year 2010;

24 “(2) \$166,860,000 for fiscal year 2011;

1 “(3) \$171,865,000 for fiscal year 2012;
 2 “(4) \$177,000,000 for fiscal year 2013;
 3 “(5) \$182,330,000 for fiscal year 2014; and
 4 “(6) \$187,800,000 for fiscal year 2015.”.

5 (c) CUSTOMS-TRADE PARTNERSHIP AGAINST TER-
 6 RORISM.—Section 223(a) of the SAFE Port Act (6 U.S.C.
 7 973(a)) is amended by striking paragraphs (1) through
 8 (3) and inserting the following:

9 “(1) \$62,600,000 for fiscal year 2010;
 10 “(2) \$64,500,000 for fiscal year 2011;
 11 “(3) \$66,400,000 for fiscal year 2012;
 12 “(4) \$68,400,000 for fiscal year 2013;
 13 “(5) \$70,500,000 for fiscal year 2014; and
 14 “(6) \$72,500,000 for fiscal year 2015.”.

15 **SEC. 4. CUSTOMS-TRADE PARTNERSHIP AGAINST TER-**
 16 **RORISM.**

17 (a) UNANNOUNCED INSPECTIONS.—Section 217(a)
 18 of the SAFE Port Act (6 U.S.C. 967(a)) is amended—

19 (1) by striking “If at any time” and inserting
 20 the following:

21 “(1) FAILURE TO MEET REQUIREMENTS.—If at
 22 any time”; and

23 (2) by inserting after paragraph (1), as redesign-
 24 nated, the following:

1 “(2) UNANNOUNCED INSPECTIONS.—The Sec-
2 retary, acting through the Commissioner, may con-
3 duct an unannounced inspection of a C-TPAT par-
4 ticipant’s security measures and supply chain secu-
5 rity practices if the Commissioner determines, based
6 on previously identified deficiencies in security meas-
7 ures and supply chain security practices of the C-
8 TPAT participant, that there is a significant likeli-
9 hood that such an inspection would assist in con-
10 firming the security measures in place and further
11 the validation process.”.

12 (b) TIER 2 PARTICIPANTS.—Section 215(b) of the
13 SAFE Port Act (6 U.S.C. 965(b)) is amended—

14 (1) by striking “and” at the end of paragraph
15 (2);

16 (2) by striking the period at the end of para-
17 graph (3) and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(4) voluntary training on supply chain secu-
20 rity.”.

21 (c) ADDITIONAL TRADE BENEFITS.—Section 216 of
22 the SAFE Port Act (6 U.S.C. 966) is amended—

23 (1) in subsection (c)—

24 (A) in paragraph (3), by striking “and” at
25 the end;

1 (B) in paragraph (4), by striking “and” at
2 the end;

3 (C) in paragraph (5), by striking the pe-
4 riod at the end and inserting a semicolon; and

5 (D) by adding at the end the following:

6 “(6) voluntary training on supply chain secu-
7 rity; and

8 “(7) increased information sharing on the secu-
9 rity threats described in subsection (d).”; and

10 (2) by striking subsection (d) and inserting the
11 following:

12 “(d) PRIVATE SECTOR INFORMATION SHARING ON
13 SECURITY THREATS.—

14 “(1) IN GENERAL.—The Secretary shall estab-
15 lish a program to promote sharing information with
16 Tier 3 participants and other private entities regard-
17 ing—

18 “(A) potential vulnerabilities, attacks, and
19 exploitations of the international supply chain;
20 and

21 “(B) means and methods of preventing, re-
22 sponding to, and mitigating consequences from
23 the vulnerabilities, attacks, and exploitations
24 described in subparagraph (A).

1 “(2) CONTENTS.—The program established
2 under paragraph (1) shall include—

3 “(A) the creation of classified and unclas-
4 sified means of accessing information that may
5 be used by appropriately cleared personnel and
6 that will provide, as appropriate, ongoing situa-
7 tional awareness of the security of the inter-
8 national supply chain; and

9 “(B) the creation of guidelines to establish
10 a mechanism by which owners and operators of
11 international supply chain infrastructure may
12 report actual or potential security breaches.”.

13 **SEC. 5. RECOGNITION OF OTHER COUNTRIES’ TRUSTED**
14 **SHIPPER PROGRAMS.**

15 Section 218 of the SAFE Port Act (6 U.S.C. 968)
16 is amended by adding at the end the following:

17 “(j) RECOGNITION OF OTHER COUNTRIES’ TRUSTED
18 SHIPPER PROGRAMS.—Not later than 30 days before en-
19 tering into an agreement between the United States and
20 a foreign government providing for mutual recognition of
21 supply chain security programs, which would result in the
22 awarding of benefits described in section 214, 215, or 216
23 of the SAFE Port Act, the Secretary of Homeland Secu-
24 rity shall—

1 “(1) notify Congress of the proposed terms of
2 such agreement; and

3 “(2) determine, in consultation with the Com-
4 missioner, Customs and Border Protection, that the
5 foreign government’s supply chain security program
6 provides an equivalent level of supply chain security
7 as provided by the Customs-Trade Partnership
8 Against Terrorism.”.

9 **SEC. 6. SECURE FREIGHT INITIATIVE.**

10 Section 232(b) of the SAFE Port Act (6 U.S.C.
11 982(b)) is amended—

12 (1) in paragraph (1), by striking “A container”
13 and inserting “Except as provided under paragraph
14 (10), a container”; and

15 (2) by adding at the end the following:

16 “(10) WAIVER.—The Secretary may waive the
17 application of paragraph (1) if the Secretary cer-
18 tifies to Congress that—

19 “(A) C-TPAT revalidations are occurring
20 at least once every 4 years;

21 “(B) the Container Security Initiative has
22 been implemented and is in operation at all
23 high-risk foreign ports;

1 “(C) 100 percent of cargo containers origi-
2 nating outside the United States undergo a
3 screening to identify high-risk containers;

4 “(D) 100 percent of the containers that
5 have been identified as high-risk are scanned or
6 searched before entering the United States; and

7 “(E) the additional data elements required
8 to be submitted to the Department under sec-
9 tion 203 to identify high-risk cargo have im-
10 proved the capabilities of the Automated Tar-
11 geting System, based on empirical evidence of
12 seizures of illegal narcotics and dangerous ma-
13 terials.”.

14 **SEC. 7. AMERICA’S WATERWAY WATCH PROGRAM.**

15 (a) ESTABLISHMENT.—The Secretary of Homeland
16 Security shall establish a national maritime homeland se-
17 curity outreach and awareness program to be known as
18 the America’s Waterway Watch Program (referred to in
19 this section as the “Program”). The program shall—

20 (1) encourage the public and industry to recog-
21 nize and report suspected terrorist activity or sus-
22 picious behavior against a vessel, facility, port, or
23 waterway; and

24 (2) promote voluntary reporting of such activity
25 or behavior.

1 (b) PURPOSE.—The Program shall be to promote vol-
2 untary reporting of activities that indicate that a person
3 may be preparing to engage or is engaging in a violation
4 of law relating to a threat or act of terrorism against a
5 vessel, facility, port, or waterway.

6 (c) COMPONENTS.—The Program shall—

7 (1) consist of a network of individuals, agencies,
8 and community-based organizations to—

9 (A) encourage the public and industry to
10 recognize and report a covered activity (as de-
11 fined in subsection (g));

12 (B) promote voluntary reporting of such
13 activity; and

14 (C) enhance the situational awareness
15 within the Nation's ports and waterways;

16 (2) be conducted in cooperation with Federal,
17 State, and local law enforcement agencies, to the ex-
18 tent practicable; and

19 (3) include education in—

20 (A) observing and reporting on covered ac-
21 tivities; and

22 (B) sharing such reports and coordinating
23 the response to such activities by Federal,
24 State, and local law enforcement agencies.

1 (d) VOLUNTARY PARTICIPATION.—Participation in
2 the Program—

3 (1) shall be voluntary;

4 (2) shall not be a prerequisite to eligibility for,
5 or receipt of, any other service or assistance from,
6 or to participation in, any other program; and

7 (3) shall not require disclosure of information
8 regarding the individual reporting covered activities
9 or, for proprietary purposes, the location of such in-
10 dividual.

11 (e) IMMUNITY.—

12 (1) IMMUNITY FOR REPORTS OF SUSPECTED
13 TERRORIST ACTIVITY OR SUSPICIOUS BEHAVIOR AND
14 RESPONSE.—

15 (A) IN GENERAL.—Any individual who, in
16 good faith and based on objectively reasonable
17 suspicion, makes, or causes to be made, a vol-
18 untary report of covered activity to an author-
19 ized official shall be immune from civil liability
20 under Federal, State, and local law for such re-
21 port.

22 (B) FALSE REPORTS.—Subparagraph (A)
23 shall not apply to any report that—

24 (i) the individual knew to be false; or

1 (ii) was made with reckless disregard
2 for the truth at the time that individual
3 made the report.

4 (2) IMMUNITY FOR RESPONSE.—

5 (A) IN GENERAL.—Any authorized official
6 who observes, or receives a report of, a covered
7 activity and takes reasonable action in good
8 faith to respond to such activity shall have
9 qualified immunity from civil liability for such
10 action, consistent with the applicable law of the
11 relevant jurisdiction. An authorized official not
12 entitled to assert the defense of qualified immu-
13 nity shall be immune from civil liability under
14 Federal, State, and local law if such authorized
15 official takes reasonable action, in good faith, to
16 respond to the reported activity.

17 (B) SAVINGS PROVISION.—Nothing in this
18 paragraph may be construed to—

19 (i) affect the ability of any authorized
20 official to assert any defense, privilege, or
21 immunity that would otherwise be available
22 under applicable law; or

23 (ii) affect any such defense, privilege,
24 or immunity.

1 (3) ATTORNEY FEES AND COSTS.—Any indi-
2 vidual or authorized official granted immunity from
3 civil liability under this section shall be entitled to
4 recover from the plaintiff all reasonable costs and
5 attorney fees.

6 (4) EXEMPTION FOR FOIA.—A report regarding
7 a covered activity made under this section shall not
8 be subject to disclosure under section 552 of title 5,
9 United States Code (commonly referred to as the
10 Freedom of Information Act).

11 (f) COORDINATION.—

12 (1) IN GENERAL.—The Secretary of Homeland
13 Security shall—

14 (A) coordinate the Program with similar
15 critical infrastructure suspicious activity report-
16 ing programs within the Department of Home-
17 land Security; and

18 (B) identify best practices from such pro-
19 grams, including how to provide feedback to
20 those that report suspicious activities.

21 (2) CONSULTATION.—The Secretary of Home-
22 land Security shall, in developing the Program, con-
23 sult with representatives of the recreational boating
24 community and commercial fishing and vessel opera-

1 tors to foster long-term participation and success of
2 the Program.

3 (3) REPORT.—Not later than January 1 of
4 each year, the Secretary shall submit a report that
5 describes the coordination of the Program and simi-
6 lar critical infrastructure suspicious activity report-
7 ing programs within the Department of Homeland
8 Security to—

9 (A) the Committee on Homeland Security
10 and Governmental Affairs of the Senate; and

11 (B) the Committee on Homeland Security
12 of the House of Representatives.

13 (g) DEFINITIONS.—In this section:

14 (1) ACT OF TERRORISM.—The term “act of ter-
15 rorism” has the meaning given the term in section
16 3077 of title 18, United States Code.

17 (2) AUTHORIZED OFFICIAL.—The term “au-
18 thorized official” means—

19 (A) any employee or agent of a vessel, fa-
20 cility, port, or waterway or other person with
21 responsibilities relating to the security of such
22 systems;

23 (B) any officer, employee, or agent of the
24 Department of Homeland Security, the Depart-
25 ment of Transportation, or the Department of

1 Justice with responsibilities relating to the se-
2 curity of vessels, facilities, ports, or waterways;
3 and

4 (C) any Federal, State, or local law en-
5 forcement officer.

6 (3) COVERED ACTIVITY.—The term “covered
7 activity” means any suspicious transaction, activity,
8 or occurrence that—

9 (A) involves, or is directed against, a vessel
10 or facility; and

11 (B) indicates that an individual may be
12 preparing to engage, or is engaging, in a viola-
13 tion of law relating to—

14 (i) a threat to a vessel, facility, port,
15 or waterway; or

16 (ii) an act of terrorism.

17 (4) FACILITY.—The term “facility” has the
18 meaning given the term in section 70101(2) of title
19 46, United States Code.

20 (h) AUTHORIZATION OF APPROPRIATIONS.—There is
21 authorized to be appropriated, for each of the fiscal years
22 2010 through 2014, \$3,000,000, which shall—

23 (1) be used to carry out this section; and

24 (2) remain available until expended.

1 **SEC. 8. RESEARCH, DEVELOPMENT, TEST, AND EVALUA-**
2 **TION EFFORTS IN FURTHERANCE OF MARI-**
3 **TIME AND CARGO SECURITY.**

4 (a) IN GENERAL.—The Secretary of Homeland Secu-
5 rity shall—

6 (1) direct research, development, testing, and
7 evaluation efforts in furtherance of maritime and
8 cargo security;

9 (2) coordinate with public and private sector
10 entities to develop and test technologies, and process
11 innovations in furtherance of these objectives; and

12 (3) evaluate such technologies.

13 (b) COORDINATION.—The Secretary, in coordination
14 with the Under Secretary for Science and Technology, the
15 Assistant Secretary for Policy, the Commandant of the
16 Coast Guard, the Commissioner of U.S. Customs and Bor-
17 der Protection, the Chief Financial Officer, and the heads
18 of other appropriate offices or entities of the Department
19 of Homeland Security (referred to in this section as the
20 “Department”), shall ensure that—

21 (1) research, development, testing, and evalua-
22 tion efforts funded by the Department in further-
23 ance of maritime and cargo security are coordinated
24 within the Department and with other appropriate
25 Federal agencies to avoid duplication of efforts; and

1 (2) the results of such efforts are shared
 2 throughout the Department and with other Federal,
 3 State, and local agencies, as appropriate.

4 (c) DEMONSTRATION PROJECT.—The Secretary,
 5 through the Under Secretary for Science and Technology
 6 shall—

7 (1) conduct a demonstration project to deter-
 8 mine the feasibility of using composite cargo convey-
 9 ances for all transportation modes to improve mari-
 10 time and cargo security; and

11 (2) submit a report to Congress on the feasi-
 12 bility of using composite cargo conveyances for all
 13 transportation modes to improve maritime and cargo
 14 security.

15 (d) AUTHORIZATION OF APPROPRIATIONS.—

16 (1) IN GENERAL.—In addition to any amounts
 17 otherwise appropriated to the Directorate for
 18 Science and Technology and other components of
 19 the Department, there are authorized to be appro-
 20 priated, to carry out the demonstration project de-
 21 scribed in subsection (c)—

22 (A) \$10,000,000 for fiscal year 2011;

23 (B) \$10,000,000 for fiscal year 2012; and

24 (C) \$5,000,000 for fiscal year 2013.

1 (2) AVAILABILITY.—Amounts appropriated pur-
 2 suant to paragraph (1) shall remain available until
 3 expended.

4 **SEC. 9. COAST GUARD PORT ASSISTANCE PROGRAM.**

5 (a) IN GENERAL.—Section 70110 of title 46, United
 6 States Code, is amended by adding at the end the fol-
 7 lowing new subsection:

8 “(f) COAST GUARD PORT ASSISTANCE PROGRAM.—

9 “(1) IN GENERAL.—The Secretary—

10 “(A) in consultation with the Secretary of
 11 State, may provide technical advice, training, or
 12 support to a government of a foreign country
 13 with jurisdiction over, or control of, a port or
 14 facility or the owner or operator of such port or
 15 facility; and

16 “(B) with the concurrence of the Secretary
 17 of State, may lend, lease, donate, or otherwise
 18 provide equipment to such government or such
 19 owner or operator to assist the port or facil-
 20 ity—

21 “(i) in meeting or exceeding—

22 “(I) applicable International Ship
 23 and Port Facility Security Code
 24 standards; or

1 “(II) standards established under
2 section 70108, or

3 “(ii) in improving or enhancing mari-
4 time domain awareness, port security oper-
5 ations, or maritime security in collabora-
6 tion with customs efforts.

7 “(2) CONDITIONS.—The Secretary—

8 “(A) shall provide the assistance described
9 in paragraph (1) based upon an assessment of
10 the risks to the security of the United States
11 and the inability of the owner or operator of the
12 port or facility to meet or exceed the standards
13 established by regulations pursuant to section
14 70108;

15 “(B) may not provide such assistance un-
16 less the port or facility has been subjected to a
17 comprehensive port security assessment by the
18 Coast Guard to validate foreign port or facility
19 compliance with International Ship and Port
20 Facility Security Code standards pursuant to
21 section 70108; and

22 “(C) may not lend, lease, or otherwise pro-
23 vide equipment unless the Secretary has deter-
24 mined that such equipment is not required by

1 the Coast Guard for the performance of its mis-
2 sions.”.

3 (b) SAFETY AND SECURITY ASSISTANCE FOR FOR-
4 EIGN PORTS AND FACILITIES.—Section 70110(e)(1) of
5 title 46, United States Code, is amended by striking the
6 second sentence and inserting the following: “The Sec-
7 retary shall establish a program to utilize the assistance
8 programs that are most capable of implementing port se-
9 curity antiterrorism measures at ports and facilities in for-
10 eign countries and territories of the United States that
11 pose unique security and safety threats to the United
12 States.”.

13 (c) CONFORMING AMENDMENTS.—Section 70110 of
14 title 46, United States Code, is amended—

15 (1) in subsection (a)—

16 (A) in the matter preceding paragraph (1),
17 by inserting “or facility” after “port”; and

18 (B) in paragraph (1)—

19 (i) by striking “port,” and inserting
20 “port or facility,”; and

21 (ii) by striking “port;” and inserting
22 “port or facility;”;

23 (2) in subsection (b)—

24 (A) in the matter preceding paragraph (1),
25 by inserting “or facility” after “port”;

1 (B) in paragraph (1), by inserting “or fa-
2 cility” after “port” each place it appears; and

3 (C) in paragraph (2), by striking “port.”
4 and inserting “port or facility.”;

5 (3) in subsection (c), by striking “port” and in-
6 serting “port or facility”;

7 (4) in subsection (d), by striking “port.” and
8 inserting “port or facility.”; and

9 (5) in subsection (e)—

10 (A) in the first sentence of paragraph (1),
11 as so amended, by striking “port security” and
12 inserting “port or facility security”; and

13 (B) in paragraph (2)—

14 (i) in the matter preceding subpara-
15 graph (A)—

16 (I) by striking “port security”
17 and inserting “port or facility secu-
18 rity”; and

19 (II) by striking “ports” and in-
20 serting “ports or facilities”;

21 (ii) in subparagraph (A), by striking
22 “ports” and inserting “ports or facilities”;

23 (iii) in subparagraph (B), by striking
24 “ports;” and inserting “ports or facili-
25 ties;”; and

1 (iv) in subparagraph (C), by striking
 2 “ports.” and inserting “ports or facili-
 3 ties.”.

4 (d) CLERICAL AMENDMENTS.—Chapter 701 of title
 5 46, United States Code, is amended—

6 (1) in the chapter analysis, by striking the item
 7 relating to section 70110 and inserting the fol-
 8 lowing:

“70110. Actions and assistance for foreign ports or facilities and United States
 territories.”.

9 (2) in section 70110—

10 (A) in the section heading, by inserting
 11 “**AND FACILITIES**” after “**PORTS**”; and

12 (B) in subsection (e), by inserting “AND
 13 FACILITIES” after “PORTS”.

○